Ministry of Attorney General
Justice Services Branch
Family Justice Services Division

The Involvement of Children in Divorce and Custody Mediation: A Literature Review

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1. BACKGROUND AND METHODOLOGY

This report presents the results of a literature review for the Family Justice Services Division concerning the involvement of children in the mediation of divorce and custody matters. The subject criteria for the review were established by the Division, and are included as Appendix 1 of this report. Section headings in the report use the same questions and follow the same sequence shown in the appendix.

The literature search used three methods:

1. The main search was undertaken by the Justice Institute of B.C. library, using two databases, Academic Search Elite and PsycINFO. The former provides full text journal coverage for almost all academic areas from 1984 to the present. The latter contains almost two million references to psychological literature from 1887 to the present, including journal articles, books, technical reports and dissertations.
2. A small number of follow-up contacts with selected professionals in the family mediation field in Canada and the United States. For these cases we sent the respondents the bibliography that had been compiled to date, and asked if they might suggest other articles or publications we might have missed. With one exception, which led to an article published in December 2002, these contacts confirmed that there is only a small body of literature specifically on the involvement of children in family mediation.
3. Additional online searches via Internet. In some cases these were undertaken to follow-up websites identified in articles or through the personal contacts identified in the previous point.

Although there is a large body of literature on such topics as the impacts of divorce on children, the impacts on children of mediated versus litigated settlements, and the role of divorce education with families and children, by contrast the literature specifically on the involvement of children in divorce and custody mediation is sparse indeed. Only 13 documents of those reviewed in the period 1985-2002 possessed findings relevant to the themes outlined by the Family Justice Services Division in Appendix 1. We were unable to obtain a further 5 or 6 articles, mostly written in the 1980s that appeared to be relevant, despite attempts through inter-library loan arrangements in Canada and the U.S.A. A bibliography of the thirteen documents, with brief annotations, follows section 2 of this report.

While these articles contained rich and insightful analyses that address the Family Justice Services Division themes, there are also some limitations that should be noted:

- many of the articles reflect opinions of practitioners in the field rather than results of empirical studies of impacts on clients. These were helpful in regard to the sections on age, structure and training, but less so in reflection to impacts.
- to the extent that findings of empirical studies were available, they are in most cases based on a small number of cases (under 100) or are individual case studies.
- no meta-analyses were found.

In general, these limitations should not be seen as deficiencies in the studies themselves. Rather, they are reflections of the modest extent of formal involvement of children in divorce and custody mediation at this particular point in history.

2. ANALYSIS OF THEMES

This section presents an analysis of data, descriptions and findings in the documents which are relevant to the themes developed by the Family Justice Services Division. The presentation of these themes is in the same order as shown in Appendix 1. References are by author as indicated in the bibliography. Since each author has only one title reviewed in this study, dates of publication are not shown in the body of the text. Page numbers are indicated where a specific quote is involved.

2.1 Goals and Impacts of Involving Children in Mediation

2.1.1 What does the current literature/ research say regarding whether children should be involved in the mediation process?

Specific benefits and drawbacks will be identified in section 2.1.2. However, all authors are supportive of some form and degree of involvement of children in their parents' divorce mediation. At the same time, they acknowledge that many mediators are against such involvement. Saposnek (325-6) states that:

> . . . child custody mediators tend to fall on a continuum: at one end are those who believe that the mediator's role is simply to be a neutral facilitator of negotiations between two parents, and at the other end are those who believe that the mediator's role is to be a strong and persistent advocate for children. Mediators who view themselves more as neutral facilitators presumably would be disinclined to include children in the process, since they would contend that mediation is a process of self-determination by the adult disputants and that the mediator must not contaminate his or her neutrality by the influence of the child's wishes. Mediators who view themselves as strong advocates for children cite clinical and research evidence . . that documents the frequent inability of parents going through divorce to consider clearly the real needs of their children. Thus, they believe it is essential that the mediator take on this role as child advocate throughout the mediation process.

Despite the stance of most of the writers endorsing some form of child inclusion, the literature stresses that actual inclusion tends to be limited at this point in time. Furthermore, what constitutes "involvement" varies in practice, and will be described in section 2.3.1. Even in jurisdictions where there is an active policy of child involvement in place, actual child consultations, evaluations or assessments occur in only a minority of cases. For example:

- Simpson (391) cites a review of a small number of conciliation cases as part of a larger national study in Britain and finds that only 13% (33) of cases in independent (non-court conciliation) processes and 15% (43 cases) in court-based processes involved the attendance of children.
- Garwood (46) reports in her two year evaluation of Lothian Family Conciliation Service (LFCS, in Edinburgh, Scotland) that the conciliator met with the children in only 19% of cases (36 out of 186). This low rate of inclusion occurred even through LFCS has a stated policy of active involvement of children.
- in a major study commissioned by the Family Services Branch of Australia's Commonwealth Attorney General's Department, a service profile questionnaire was

sent to all counselling and/or mediation services funded under its Family Relationships Services Program throughout Australia. Of 62 service profiles returned (out of a possible 71), 16 included mediation services. Only 5 of these 16 services were able to provide data on the number of children seen directly by the mediator in the period January - June 1997. The authors report:

For the 5 mediation services, 268 cases were seen in the ... period, with 30 (11%) involving children directly. A number of other mediation services, without giving exact figures, stated that they had not seen any children during the period. (FACS[1] Section 6.2, page 3).

2.1.2 What are the assessed benefits / drawbacks to involving children in mediation? Has the research shown a qualitative impact on the children regarding their sense of control and well-being through the divorce and separation of their parents?

The authors identify numerous benefits resulting from the involvement of children in their parents' divorce mediation, both for the children themselves and their parents, as shown below.

Maintaining a focus on the child's needs:

- All authors state that inclusion helps to keep the child's needs and a parenting focus in the forefront of negotiations despite other pressing concerns. Several authors stated that during a divorce parents often experience a "diminished capacity to parent" (e.g. Wallerstein) and thus the child's needs often receive less attention. Inclusion is seen as a way of re-establishing that focus. For example, Kelly (8) cites a study by Dunn in which only 5% of 150 children stated that they had been fully informed and encouraged to ask questions about their parents' separation. [2]
- Parents have difficulty separating their needs from the needs of their children in regular mediation (Drapkin and Bienenfeld; Kelly).
- If children are present in their parents' session, their immediate and concrete concerns (e.g. which toys will be in house) can be addressed (Irvin). Parents are often very receptive when made aware of these "small scale" concerns that are important to the child, but would normally be overlooked.

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[1] References to this report throughout this study will use the acronym FACS, which stands for the Commonwealth Department of Family and Community Services and is used in their report. Note that although the Attorney General's department commissioned the report, all references in the literature are to the reports published by FACS.

[2] The article by Dunn was not reviewed in this study. Reference is Judy Dunn et al, *Family Lives and Friendships. The Perspectives of Children in Step-, Single-Parent, and Nonstep Families*, 15 (2) J. Fam. Psychol. 272-87 (2001).

Empowerment of the child:

- Mediation provides a framework where children's needs can be addressed formally rather than casually; this can be a source of empowerment for the child (Simpson; Garwood; Saposnek).
- Communication engendered in the mediation process can help to reduce stress or guilt feelings children may have over their role in parental conflict by increasing knowledge of what their parents are going through (Beck and Biank; Saposnek).
- Direct involvement can give children a greater sense of control over their lives, reduce confusion, and increase coping skills (McIntosh; Saposnek; Gentry; Kelly; Garwood).

Improved child-parent relationship:

- Involvement in the mediation can improve child-parent communication, which often suffers during divorce and separation (McIntosh; Garwood; Beck and Biank; Saposnek; Drapkin and Bienenfeld).
- If children are present during their parents' mediation it can help them understand that one of the primary motivations for their parents' participation in mediation is their love and concern for the child. This can be very supportive for the child (Irvin).

Quality of agreement:

- When children have the opportunity to talk to someone neutral, they often voice concerns that they would not raise when communicating directly with their parents. This ultimately brings forth more information that can be considered in developing the agreement (McIntosh; Garwood; Saposnek; Kelly).
- Conciliation or mediation allows the conciliator to ascertain both the child's and parents' view in order to see whether the child thinks the agreement is in his/her best interest (Simpson; Gentry). Several other authors expressed variants of this theme of alignment of views.
- Involvement of the child can result in access arrangements that more fully consider the impacts on the child (McIntosh; Beck and Biank; Garwood; Kelly).

Accessing other support for child:

- Involvement in the mediation process may facilitate a referral of the child to a therapist in appropriate situations, and his/her ultimate comfort with a therapist (Saponsnek; Drapkin and Bienenfeld). Several authors noted that although mediators are usually not directly engaged in therapy, involvement in mediation may have identifiable therapeutic effects for a child.

In the FACS study in Australia cited in Section 2.1.1, a randomized mail survey was sent to parents who had attended one of 30 counselling and/or mediation services in the previous year.

Forty-one surveys were returned for the mediation sub-group, representing cases involving 145 children. Parents rated the short term benefits of mediation (within 6 months of finishing) as of "great benefit" or "some benefit" for 91% of the children in cases where the child was seen by the mediator, versus for only 50% of children not seen by a mediator (FACS, section 4.2).

Potential drawbacks to the involvement of children identified by the authors- usually in the form of concerns expressed by mediators in the field rather than as documented impacts in cases - include the following:

- Professionals may use the child's articulated needs as moral pressure on parents, thereby biasing the mediation process (Simpson).
- Participation in the mediation can create loyalty conflicts in children (Gentry).
- Mediation can be an additional burden on the child during the already stressful process of divorce (Simpson; Gentry), and children may be exposed to continued volatile and negative dynamics between the parents (Irvin).
- A child's view can sometimes become a "trump" card by one or the other parent which then marks the end of a consensual decision-making process (Simpson). In a similar vein, one or the other parent may claim that the child is being "traumatized" in the mediation, and use this as a weapon against the other parent. This type of situation can arise because children often express their feelings quite openly, and a mediator may lack the skills or willingness to respond to these emotions (Irvin).
- Children may not express their true opinions or feelings if they fear their parents' retaliation or anger at their disclosures (Drapkin and Bienenfeld).

In two studies which involved qualitative interviews with a small number of children (McIntosh; Garwood) a few children mention specific instances where they feel that they have not benefited, or where other children would not benefit by being involved, including:

- When parents are unable to respond to specific concerns the child has raised.
- When the child is "doing fine" and doesn't want to talk.
- When they feel in need of more active intervention by the mediator because of a high level of conflict between their parents.

There is agreement among most authors that there are certain times when children should or need not be involved in the mediation process. These are:

- If the children do not want to be involved.
- In very high conflict situations where parents are openly hostile and angry, or if parents do not want their children involved in the process.
- If the parents are arguing because they do not wish to take responsibility for the child.
- When both parents describe their child's needs similarly and have parallel ideas as to which plan is best suited for the child.

2.1.3 What impact, if any, does the involvement of children have on the parents?

Most authors feel that involvement of children in the mediation helps parents to reduce their own level of stress. Parents feel that mediation is an area where their child's needs will be met, even if they (the parents) are wrapped up in their own issues. This benefit is especially emphasized by Zemmelman et al in their description of a joint custody project which involved child assessments and feedback to the parents by mediators. In an Australian study which reports feedback from parents in child inclusive mediation services, one parent comments:

> . . . I couldn't believe the difference it made when the mediator talked with the kids. I wasn't worried about it because we weren't in the head space to really be there for the kids and here was someone offering to help . . . (FACS, section 4).

Irvin notes that where a child is present in the mediation session, it can give the mediator an opportunity to observe and comment on specific positive child-parent interactions that may arise. This can give encouragement to the parent(s), and reinforce positive parent-child relationships.

Whether a parent is the custodial or non-custodial parent can impact their receptiveness to the inclusion of children and their sense of outcomes when children are involved. Simpson (393-4) notes:

> . . . custodial parents would often take the position that in view of the level and quality of their contact with the child, they were in the best position to know what was in their child's best interest . . . (they) often made assumptions that an intervention involving the child would inevitably be traumatic and it was therefore necessary for them to adopt a protective stance . . . Alternatively, non custodial parents expressed the view that the power of the custodial parent was likely to have obscured the real wishes of the child, which had become smothered in an overbearing relationship . . .
>
> For the custodial parent, the exclusion of the child from direct participation in the process of divorce was often a means of maintaining the status quo; for the non-custodial parent, the desire to include the child directly was a means to alter the status quo.

2.1.4 Does involving children in mediation have an impact on the outcome of mediation?

This had been addressed in section 2.1.2, in which several benefits in terms of the quality of the agreement are noted.

2.1.5 Are agreements more/less likely to be reached when children are involved in the mediation process?

None of the sources identified in this review specifically addressed this issue.

2.1.6 Are the agreements reached qualitatively different from those reached when the children are not involved?

This question is addressed in a limited way in section 2.1.2, in which the superior quality of the agreement is seen as a benefit of child involvement. The principal benefits noted there are the opportunity to ascertain whether the child feels the agreement reflects his/her best interests, and that access agreements tend to be more carefully constructed. Beck and Biank present a series

of eight case studies which collectively show that inclusion of a child assessment in the divorce mediation process can significantly improve the quality of the resulting agreement, in that it fully and formally incorporates the needs of the child.

2.2 Age Considerations

2.2.1 Does the research suggest at what age children should be involved in the mediation process?

Most authors do not mention absolute age restrictions in services, but report that mediators tend to judge the utility of inclusion on an individual basis related to the maturity of the child. However, most services are reluctant to see children of preschool age (younger than 3 or 4), and mediators are more likely to include children if they are of school age (age 5 and up).

- In a review of 65 court-based conciliation services in Britain in which child inclusion was optional, Simpson (390) reports that 13 of the schemes which allowed children to attend imposed a minimum age limit. This limit ranged from 5 to 12 years depending on the service provider. Four of 42 independent (non-court) schemes had a minimum age, which varied from 6 to 13 years.
- In two Australian studies (FACS; McIntosh) age guidelines are not specified, but the children involved were described as "school aged".
- In Garwood's study of the Lothian Family Conciliation Service in Edinburgh, she refers to 84 cases in which the parents made the decision not to involve their children. In only 7 of these 84 cases (8%) was the reason for non-involvement because the child was too young. The average age in these cases was 8.5 years. In 64 cases it was the mediator's decision not to include the child. In 32 of these 64 cases (50%), the reason for non-inclusion was because the child was too young. The average age of this group of cases was 3.5.
- In articles describing services in the United States, few specific age limits are mentioned. For example, in their series of case studies, Beck and Biank usually refer to school age children; Irvin refers to "toddlers" as well as older children. Two articles are more specific. Darpkin and Bienenfeld advocate a minimum age of three years, because "children this young usually are developmentally unable to communicate verbalizations with their play actions". But the authors stress that there is little rationale for exclusion above this age as long as the mediator approaches the task by asking "What can I learn about this child?" rather than "What answers can I get to my questions?" (Drapkin and Bienenfeld, 64). By contrast, Kelly states that " . . . involving young children under six years of age is generally not appropriate, as they have neither the emotional and cognitive maturity, nor the capacity for moral reasoning that is essential to participation in meaningful dialogue regarding their perspectives on divorce outcomes and parent behaviour" (Kelly, 9).

2.2.2 Are different approaches suggested based on the age, maturity, and developmental level of the child?

"I went there thinking it would be boring but they made it really interesting for us kids, with drawings and toys and stuff." (boy, 11 years in FACS, section 5.3).

Most authors stress the importance of interacting with the children at a level appropriate to their age and maturity level, as children are often unclear and easily confused about the process in which they are engaging (Garwood; UK College of Family Mediators; FACS; Drapkin and Bienenfeld). Irvin emphasizes the importance of the mediator having knowledge of current trends and issues relevant to the child's age group to facilitate the development of rapport with the child. All programs that involved children used some form of play therapy, most frequently the use of drawing and playing with dolls. Related observations include the following:

- Books, drawing and toys are useful in relaxing younger children. Older children are often given charts, diagrams, and/or books. Not only do these devices help to put the child at ease, but also to focus the discussion (Garwood). Beck and Biank (190-192) provide considerable detail on how dolls and drawings can be used and interpreted by mediators.
- In a model project on joint custody for families undergoing divorce in which assessments were done of children by a psychologist and then shared in at least one session with the parents, the authors state that consultations with children were done in a "specially equipped playroom using play therapy techniques" (Zemmelman et al, 35).
- Garwood states that informal discussions work with children at all levels of maturity, however occasionally when children of different ages are seen together it is difficult for the younger ones to understand an explanation geared to an older child's comprehension level. For this reason, the author feels that in these situations it may be preferable to see the children separately.
- Most authors agree that younger children are best able to communicate through the use of play rather than direct discussion (i.e. by integrating some verbalizations with their play actions) (Drapkin and Bienenfeld; FACS).

2.3 Structure for Involving Children in Mediation

2.3.1 Does the research suggest at what stage in the mediation process children should be invited to participate?

To frame the response to this question it is important to appreciate that there are a variety of ways in which children can be involved in the mediation process. Saposnek (329-30) outlines five methods:

1. Children may be brought in at the end of the final mediation session simply to be informed of the agreements reached by their parents.
2. They may be consulted by the mediator and parents after agreements have been reached regarding their opinion about the agreement.

3. They may be interviewed by the mediator early in the mediation process to gather their views, concerns, feelings and preferences. This can be done with each child individually, siblings together, with one parent separately, or with both parents together. The mediator then will introduce these data into the parents' negotiations and will advocate for the children's needs.

4. Children may be brought into the sessions periodically throughout the process whenever an issue comes up that might benefit from their input.

5. Children may be present throughout the mediation process and participate in decision making as an equal party to the proceedings (particularly in the case of adolescents). In some cases children are also included in a pre-mediation or orientation stage in which divorce education classes and children's groups are offered.

A variation of the third method is described in a study of the Joint Custody Project in San Francisco, in which the actual mediation was preceded by a six-week educational support group for the parents. During this time, the children were assessed by both a psychologist and "mediator-clinician". The subsequence mediation process involved up to 12 conjoint sessions, in at least one of which the information from the assessments is introduced.

Each of the above methods involves an implicit or explicit stage at which the child is involved. In general, most authors feel that it is preferable to include children before all decisions are made so that the child's input can be reflected in the agreement.

2.3.2 Are there certain issues that should or should not be addressed with the children's involvement?

Garwood describes the following issues as ones that most often are discussed with conciliators. They are also frequently identified by other authors:

- Custody and access
- The child's general feelings about the divorce, their tensions, wishes, hopes and fears
- Their relationships with their parents and/or a parent's new partner

Garwood notes that the main reason for not involving children in Lothian Family Conciliation Service sessions was if the subject concerned financial and property matters or decisions around the ending of the martial relationship. However, McIntosh reports an interesting "spin-off" in relation to property matters if parents have consulted with their children on other matters:

> . . . half reported that the process of coming together as parents helped them to move on to resolve property disputes in a more cooperative manner. (McIntosh, 63).

2.3.3 What screening tools for both adults and children are employed prior to involving children in mediation?

To the extent that this issue is dealt with, authors address the issue of screening criteria rather than screening tools. There is agreement among most authors on the following:

- That the child is willing to participate. The UK College of Family Mediators Policy and Practice Guidelines, section 4.1.7. states that there must be:

> . . . informed consent from the child based on age-appropriate planning and preparations, including information and explanation of when, where and how direct consultation/involvement is to take place. The right of the child to consider, and the chance to accept or decline is essential.

Garwood, as well as Drapkin and Bienenfeld make similar points.

- That permission of both parents is obtained, and that the mediator clarify and obtain agreement on the extent of the child's participation (UK College of Family Mediators; McIntosh; Garwood; Kelly; Wallerstein).

Other screening issues are reflected in the discussions in section 2.1.2 of this study (i.e. when children should not be involved in mediation) and 2.2.1 (appropriate age for children). The UK College of Family Mediators (4) also describes preliminary practice guidelines for direct consultation/involvement with children. Some of the considerations in the guidelines relate to the concept of screening:

- The suitability of the environment – welcoming, comfortable non-stigmatic.
- The culture, religion and ethnicity of the family.
- The developmental stage of the child.
- The emotional and psychological stage of each child.
- The level of conflict in the family.
- The family's own way of making decisions.
- The financial considerations and constraints.

2.3.4 How should children be involved? Are they to join a session with their parents, or are they to be interviewed separately from their parents? Are the children to be interviewed by the mediator or by a separate neutral party?

The different formats for child involvement have been discussed in section 2.3.1. Most authors reviewed for this study agree that children should be interviewed separately from parents so that they can be heard directly and free of parental pressure.

There was less consensus on whether siblings should be seen separately or together. The UK College of Family Mediators guidelines state that this should be decided on a case-by-case basis. Drapkin and Bienenfeld (70) discuss the merits of both approaches. For example, separate interviews of siblings can enhance each child's feeling of being considered and can avoid dominance of older children. On the other hand, interviews with siblings together can stimulate discussion, reveal facets of their interactions that can be informative input for decisions such as split custody, and allow siblings to share feelings and feel support from each other. Thus flexibility again is necessary; some authors even suggest meeting with siblings both together and separately.

In most cases described by the authors, it is the mediator who meets with the child(ren) (UK College of Family Mediators; Kelly; Drapkin and Bienenfeld; Irvin; Garwood; FACS). In other cases a child psychologist, therapist or trained child interviewer undertakes these contacts

(Beck and Biank; Zemmelman et al, McIntosh). Beck and Biank specifically address the issue of whether it is appropriate that a trained mediator-therapist should undertake both an assessment and mediation role, and have found that parents tend to "...feel more comfortable remaining with the professional whom they now trust"(i.e. their mediator) to undertake both roles (Beck and Biank, 189).

2.3.5 What is the role of the mediator when children are involved? Is the mediator a neutral party, or does he/she act as an advocate on behalf of the child?

Irvin (101-102) lists a range of potential roles for mediators who include children in their process:

- Educator: to teach about the mediation process, the divorce process, the ways in which change affects people (both adults and children), and feelings associated with the process – all in an effort to normalize these dynamics for the children.
- Supporter: to encourage and understand ideas and feelings expressed by the children, and to emphasize some of the positives that are likely to or already have taken place in the family (e.g., less arguing, two birthday parties).
- Confidant: to be willing to keep secret the fantasies, fears, preferences, ideas, and concerns that the children wish to be kept from their parents.
- Messenger: to take to the parents those things that the children would like for them to know but have not yet been able to express.
- Advocate: to assume the role of the children's protector in the event the parents are unable or unwilling to consider their best interests.
- Resource: to lead children to reading materials, plays, movies, professional resources in the school and community, other children, and legal resources, if needed.
- Evaluator: to determine whether the children appear to be adjusting to the separation and divorce in the context of their overall development.
- Therapist: to help children reestablish some sense of equilibrium, to focus at least temporarily on their feelings, and to improve family relationships.

Irvin acknowledges that for some mediators the roles of evaluator and therapist may appear inappropriate, and stresses that evaluations should not be " . . . formalized as custody recommendations (to parents or courts), but rather they should be used to help parents understand their children's needs (ibid). She also states that some mediators " . . . assume the role of counselor or therapist when working with children – more so than with the parents," but emphasizes:

> The role must be thoughtfully considered and carefully selected in advance . . . and the mediator must be clear about which will be utilized and why. The last thing families in the process of dissolution need is further confusion (ibid).

As noted in the previous section, others (e.g., McIntosh; Zemmelman; UK College of Family Mediators) make a clear distinction between the roles of mediator on the one hand and

psychologist, child interviewer or therapist on the other. Still others (e.g. Beck and Biank) talk in terms of a "mediator–therapist" trained for both roles.

Most authors either state that the mediator should not be seen as an advocate of the child (e.g., Saposnek; UK College of Family Mediators), or convey the idea of advocacy in more neutral terms, e.g., being a "non-aligned confidant" (Drapkin and Bienenfeld, 64) or simply helping to maintain a focus on parenting and the child (McIntosh).

2.3.6 How is the information that children provide being used by professionals and by parents?

Drapkin and Bienenfeld (83) describe three methods of presenting children's information to parents:

- summarizing the child's perspective with the entire family present.
- allowing the child to express him or herself to the parents with the mediator acting as facilitator.
- sharing the child's concerns separately with each parent.

Although the choice of these methods may be one of individual style, the authors note that if a parent is likely to be defensive in receiving information, it would be best to deal with that parent separately. Alternately, if each parent claims to be hearing different views from their child, it may be advisable to discuss the information with child and both parents together.
The authors state that if a child fears reprisals from a parent, or if the parents tend to "marshal evidence" against each other, the mediator should only share impressions and observations rather than the child's actual verbatim remarks. The idea is "to help parents understand their child, not build 'evidence' against each other."(ibid)

These examples address the method of providing information. Most authors consistently state that the purpose of presenting information is to maintain a focus on parenting which will allow parents to incorporate information about their child's expressed needs into their parenting plan or other elements of an agreement.

2.3.7 Are children involved in mediation to provide information and feedback regarding the issues at hand or are they an active part of the decision-making process?

Almost all the authors state that the child is not an active part of the decision-making process. For example, in a discussion on preparing children for mediation, Drapkin and Bienenfeld state that "parents can explain to teenagers that the counselor wants to hear their feelings about the family situation, but that they will not be making the decision." (ibid)

The one exception is Saposnek, who as shown in section 2.3.1, states that one of five methods of child involvement is for children (particularly adolescents) to be present throughout the mediation process and participate in decision making as an equal party to the proceedings (Saposnek, 329-30).

2.3.8 What approach is suggested if the parents do not agree with what the children have stated as being their views/desires?

As per the previous section, there is a near consensus that in the final analysis, it is the parents who make the final decision. It is less clear what should be done by the mediator if the parents ignore a child's wishes. For example, the UK College of Family Mediators Policy and Practice Guidelines on Children, Young People and Family Mediation (7) state:

> The principal that the parents are the decision-makers should be upheld.
>
> Parents need to agree to listen to what the children have to say and to value what is said particularly if it is not what they want to hear.
>
> Mediators need to know how to handle the situation, should it arise, where parents might jointly agree to something in the knowledge that the child has made clear to the mediator that this would not be acceptable.
>
> It has also been noted in section 2.3.6 that if each parent claims to be hearing different views from their child, it may be advisable to discuss the information with the child and both parents together.

2.3.9 How is the issue of confidentiality with respect to the children's statements addressed in the literature?

This issue is addressed specifically in only four of the documents reviewed. Among these, there is a consensus that the mediator should make explicit beforehand both to parents and the child(ren) how the issue of confidentiality will be dealt with. It is also agreed that a concern for child protection (i.e., in the event of an allegation of abuse) will override maintaining confidentially with the child. The UK College of Family Mediators (11) also mentions self-harm (e.g., suicide risk) that might override the right to confidentiality.

Other confidentiality issues are more subtle. For example, Garwood (49) states that a few children in her study mentioned the importance to them of speaking to the conciliator alone. They were not so concerned about matters they raised being relayed to their parents, but rather were worried about disclosure in front of their siblings. They didn't want to sound "silly" in front of their siblings, or they wanted to raise something themselves with the conciliator. Garwood also reports that some conciliators offer full confidentiality to the children, saying that nothing will be passed on to their parents without their own agreement. Others do not offer confidentiality, so that they will not be drawn into "secrets" with the child. Garwood recommends that the conciliation service develop a uniform policy.

Drapkin and Bienenfeld (82) note that younger children usually do not understand the subtleties of confidentiality:

> The younger the child, the more the mediator has to provide checks on what the child understands. Sometimes a child gives permission, but does not really understand which or how content will be revealed. So it is useful to summarize what the parents will be told and then ask the child if he or she wants any of it kept "secret."

The importance of this type of clarification to a child is captured in the comment of a 14 year old Australian girl. Although referring to a divorce counselling session, it applies equally to a mediation interview:

> "When my parents split up, I thought it was my fault and I needed someone to talk to. The stuff I had inside would have hurt mom and dad – it was good to talk in private. Once she (the counsellor) told them a stupid little thing I wouldn't have wanted her to say and that was terrible – she should have asked me first."

The UK College of Family Mediators (11) address the issue of what a mediator should do if either parent does not agree to their child talking confidentiality to the mediator. On the one hand, the mediator would have to make this clear to the child in advance. On the other hand, the mediator ". . . may conclude that this refusal on the part of the parents raises serious doubts about the appropriateness of Direct Consultation."

2.4 Training and Qualifications of the Mediator

2.4.1 What level of education do the professionals have?

None of the articles reviewed in this study specifically discuss levels of education for mediators. Only general reference is made to a variety of professional backgrounds, some of which are not of mediators but of a separate professional who performed an assessment of the child, e.g., "social science professionals with prior experience working with children" (McIntosh, 59). The main discussions center on training, which is dealt with in the next section.

2.4.2 What, if any, specialized training is suggested for the professionals? (i.e., interviewing skills, child development, advanced mediation skills).

There is acknowledgement by several authors that involvement of children in the mediation process may take mediators into areas where they may require new training. However, specifications about the extent of that training vary considerably. Furthermore, in some cases it is not the mediator who meets with the child.

The UK College of Family Mediators Policy and Practice Guidelines for Children, Young People and Family Mediation (3) specifies that the family mediator is ". . . to have completed successfully a UK College of Family Mediators recognized training in consultation with children," but adds that accreditation arrangements are in the process of development. Section 11.2 of the Guidelines specify 15 core abilities, skills and competencies for the conduct of Direct Consultation with children:

- The engagement with the child, e.g., putting children at their ease; explaining roles; setting boundaries; clarifying the process and manner of "feedback".
- Deciding whether to see children separately, as a group of siblings or both.
- Exploring each child's perspective and concerns.
- Acknowledging pain, anger, distress and other strong feelings.
- Using appropriate questioning to understand what the *child* is thinking and feeling.

- Using a third person perspective, e.g., "what some children feel . . ."
- Giving appropriate support and reassurance.
- Acknowledging and managing distress sensitively.
- Having a clear view of what is normal.
- Encouraging the child's own problem-solving resources, e.g., discovering *their* ideas for their parents.
- Managing "feedback".
- Recording the child's wishes and views accurately.
- Managing co-working, e.g., to gain experience; as part of a model of working.
- Helping the child to understand the perspectives of both parents.
- Helping parents to understand and explore what messages to give to children and how to give them where appropriate.

McIntosh (59) describes the training of staff in a child-inclusive mediation process in a model project in Australia. The project involves a single individual conciliation with children by a trained child interviewer who is not involved in the parents' mediation:

> Staff from the two participating agencies came together for an initial day-long workshop to go through the model and research design with a second training day for child interviewers. Although only social science professionals with prior experience working with children were trained to consult with children directly, all staff were briefed about the child interview and feedback to parents and incorporation of the feedback into the ongoing mediation.
>
> Training for child interviewers covered rapport building, clarifying expectations, use of family drawings and projective material, confirming what was to be communicated to parents and ensuring the child felt supported and reassured by the process. Follow-up group supervision and consultation were provided.
>
> Staff in this pilot concluded that training would best occur in a series of sessions over time alongside close supervision of cases in progress. Subsequent to the pilot, a full two-day training program for new child interviewers has proved worthwhile. Clearly mediators without child specific training who might want to consult in this way would require extensive training and support.

Garwood (45) describes a process of self-education undertaken by conciliators in the earliest conciliation service in Scotland (Lothian Family Conciliation Service) to deal with children as part of divorce conciliation:

> The conciliators themselves had to develop their own practice as there was very little existing knowledge or experience. They also felt a need to enhance their own skills in communicating with children and increase the agency's play materials. Two conciliators were able to develop their skills in communicating with children by joining a special interest

group on working with children. Discussions with a child psychiatrist and a child psychotherapist were held to help conciliators consider and develop their ideas and practice of seeing children alone and with their families. LFCS was able to seek advice on play materials and toys from a specialist Play Resource Unit in Edinburgh and buy a good selection of toys with money from a TV appeal for Children in Need.

Annotated Bibliography

Beck, P. & Biank, N. *Broadening the Scope of Divorce Mediation to Meet the Needs of Children,* Mediation Quarterly 14(3), (1997), 179-199.

This article is drawn from the authors' experience as co-founders and mediator/counsellors in "Partners in Transition", a counselling and mediation service for divorcing families which operates in the United States. The authors present eight case studies which describe child assessment processes and issues and in some cases provide follow-up information.

Drapkin, R. & Bienenfeld, F. *The Power of Including Children in Child Custody Mediation,* Journal of Divorce 8 (3,4), (1985), 63-94.

This early article (1985) draws on the authors' experiences as senior family mediators with the Los Angeles Superior Court and provides detailed descriptions of methods mediators can use for involving children that can enhance the effectiveness of mediation in custody cases.

FACS. *Child Inclusive Practice in Family and Child Counselling and Family and Child Mediation.* 2002, Commonwealth Department of Family and Community Services.

Website version obtained at http://www.facs.gov.au/.

This is a major report which examines child focused practices in both divorce/separation mediation and counseling in Australia. It evaluates 62 service profiles (from a total of 71 possible services) representing 45 organizations. Of these profiles, 16 represented mediation services. The report discusses why children suffer during divorce, and how this can be minimized by having children participate in the mediation/counseling process. It also provides statistics about the degree of child participation in some of the mediation services.

Garwood, Fiona. *Children in Conciliation: The Experience of Involving Children in Conciliation.* Family and Conciliation Courts Review, 28(1) (1990), 43-51.

After outlining some basic statistics about divorce in Scotland this article looks at the issues involving children in mediation at the Lothian Family Conciliation Service (LFCS) in Edinburgh, Scotland. It describes the procedures followed, problems, impacts and confidentiality issues in providing the conciliation services. It reports on 36 cases involving 64 children out of a total of 186 cases reviewed.

Gentry, Deborah. *Including Children in Divorce Mediation and Education: Potential Benefits and Concerns.* Families in Society: The Journal of Contemporary Human Services, May-June 1997, 307-315.

This article highlights research findings on the impact of parental divorce on children, describes divorce mediation interventions designed to minimize negative consequences for children as a result of their parents' divorce, and addresses potential benefits and drawbacks of involving children.

Irvin, K.K. *Including Children in Mediation: Considerations for the Mediator.* Family Therapy Collections 12 (1985), 94-107.

This article reviews practice and literature in the early 1980s regarding child involvement in their parents' mediation. It uses this review as a base to address concerns and roles a mediator needs to consider when dealing with children and, drawing on the author's own experiences in the United States, provides sample questions and types of interaction that a mediator could use when dealing with children.

Kelly, Joan. *Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice.* Virginia Journal of Social Policy and the Law, 10(1), (Fall 2002), 129-163.

This comprehensive practice review by a leading American authority draws its recommendations from a large body of literature. Part of the review identifies ways in which children can be involved in mediated settlements, the benefits and drawbacks of such involvement and where child involvement would be most appropriate.

McIntosh, Jennifer. *Child-Inclusive Divorce Mediation: Report on a Qualitative Research Study*. Mediation Quarterly 18(1) (Fall 2000), 55-69.

A small but comprehensive Australian study that summarizes the results from one metropolitan agency over a four month pilot project of child involvement in mediation. The sample consisted of 26 parents and 28 children from 13 families who were using a child-focused mediation model. Extensive follow-up was used to evaluate the impact that child involvement had on the children's and parents' divorce mediation experience.

Saposnek, Donald. *The Voice of Children in Mediation: A Cross-Cultural Perspective*. Mediation Quarterly 8(4) (1991), 325-342.

The major goal of this article is to examine how cultural values regarding children relate to their degree of involvement in divorce mediation. It includes a review of the reasons for (or not) involving children and the ways in which they have been involved in divorce and custody mediation.

Simpson, Bob. *The Children Act of 1989 and the Voice of the Child in Family Conciliation*. Family and Conciliation Courts Review 29(4) (October 1991), 385-397.

Using the Family Act of 1989 as a starting point, this article evaluates the extent of involvement of children in mediation in Britain. Based on an analysis of 65 court based conciliation services and 42 independent schemes, Simpson examines the pros and cons of involving children, the extent to which they are involved and the views of families that have had children involved.

UK College of Family Mediators. *Children, Young People and Family Mediation: Policy and Practice Guidelines*. Bristol (September 2002) (http://www.ukcfm.co.uk/)

This policy document from the UK College of Family Mediators provides guidelines for mediators who are including children in the divorce mediation process. The guidelines address such issues as the mediator's role, pre-requisites, practice guidelines, quality assurance, confidentiality and competencies.

Wallerstein, J. *Psychodynamic Perspectives on Family Mediation*. Mediation Quarterly 14/15 (Winter 1986/Spring 1987), 7-21.

An article which focuses on the impact of divorce on children and how some of these impacts can be alleviated when children are included in the decision making process. This article draws broad conclusions from cited work as well as the author's own experience.

Zemmelman, Steven E.; Steinman, Susan B.; and Knoblauch, Thomas M. *A Model Project on Joint Custody for Families Undergoing Divorce*. National Association of Social Workers, Social Work (January-February 1987), 32-37.

This article outlines a service model which helps resolve conflicts over child custody in the San Francisco area. A total of 102 parents and 74 children were evaluated for the joint custody project that served as a basis for this study. While most of the article outlines general mediation procedures, there is a section devoted to child assessment and involvement in the mediation process. The article also describes the benefits of including child assessments in the mediation process, although the relationship between the settlement and the assessments is not elaborated.

Appendix 1

Subject Criteria

a) Goals and Impact of Involving Children in Mediation

- What does the current literature/research say regarding whether children should be involved in the mediation process?
- What are the assessed benefits/drawbacks to involving children in mediation? Has the research shown a qualitative impact on the children regarding their sense of control and well being through the divorce or separation of their parents?
- What impact, if any, does the involvement of children have on the parents?
- Does involving children in mediation have an impact on the outcome of the mediation?
- Are agreements more/less likely to be reached when children are involved in the mediation process?
- Are the agreements reached qualitatively different from those reached when children are not involved?

b) Age Considerations

- Does the research suggest at what age children should be involved in the mediation process?
- Are different approaches suggested based on the age, maturity and developmental level of the child?

c) Structure for Involving Children in Mediation

- Does the research suggest at what stage in the mediation process children should be invited to participate?
- Are there certain issues that should and should not be addressed with the children's involvement?
- What screening tools for both adults and children are employed prior to involving children in mediation?
- How should children be involved? Are they to join a session with their parents, or are they to be interviewed separately from their parents? Are the children to be interviewed by the mediator or by a separate neutral party?
- What is the role of the mediator when children are involved? Is the mediator a neutral party, or does he/she act as an advocate of behalf of the child?
- How is the information that children provide being used by the professionals and by the parents?
- Are children involved in mediation to provide information and feedback regarding the issues at hand or are they an active part of the decision making process?
- What approach is suggested if the parents do not agree with what the children have stated as being their views/desires?
- How is the issue of confidentiality with respect to the children's statements addressed in the literature?

d) Training and Qualification of the Mediator

- What level of education do the professionals have?
- What, if any, specialized training is suggested for the professionals? (i.e., interviewing skills, child development, advanced mediation skills).